

NATIONAL UNIVERSITY OF SCIENCE AND TECHNOLOGY

FACULTY OF COMMERCE

DEPARTMENT OF BUSINESS MANAGEMENT

LABOUR LAW – CBU 2207

SUPPLEMENTARY EXAMINATIONS – AUGUST 2011

TIME ALLOWED: 3 HOURS

INSTRUCTIONS TO CANDIDATES

Answer any **four** questions.

INFORMATION TO CANDIDATES

- i) All questions carry **25** marks.
- ii) Questions can be answered in any order.
- iii)** Credit will be given **for the use of appropriate examples.**
- iv) This paper contains **seven** questions.

QUESTION 1

Barwick School

Versus

Sheki Mudzukira

The respondent Sheki Mudzukira is an incorrigible thief given to stealing his employers property.

On 12 October 1998, he was caught red handed in possession of no less than ten items stolen from his employer. He was issued with a final written warning.

The respondent did not however mend his ways on the 3rd of March 1999, he stole a bottle of cooking oil from his employer. This led to the parties agreeing in writing to mutually terminate their contract of employment. This matter came before the Labour Court as an application for condonation of Late noting appeal.

The respondent has no defence to the allegation of theft. He however seeks to wriggle out of the natural consequences of agreement by alleging that he did not understand the contents of the

written agreement. The respondent countered that the document was explained to him in vernacular.

It appears the respondent agreed to the termination of this contract of employment to avoid being reported to the police. He knows what he had done.

With reference to relevant labour legislation discuss how the Labour Court is likely to rule on this matter. **[25 Marks]**

Source: Labour Court
Judgement No: LRT/H/45/2000
Case No: LRT/H/49/99

QUESTION 2

Wholesaler Centre (Pvt) Ltd

Versus

M. Ndlovu and others

The facts of the above case are that a number of employees of the wholesale centre engaged in an illegal strike, which lasted over an hour. The employer suspended some but not all of the employees.

A hearing was conducted at which the employer found Mr. Ndlovu and eight other employees guilty of willful and final disobedience to a lawful order.

Employees appealed to the Labour court against the change and dismissal. All parties agreed that the strike was illegal, but it was argued on behalf of the employees that the communication between management and workers was poor, and that management should have sought to dismiss all and not only some of the employees who engaged in a strike.

With reference to the Labour legislation, discuss how the labour court is likely to rule. **[25 Marks]**

Source: LRIS Vol. 18, 2004

QUESTION 3

Zimbank

Versus

Thando Ndlovu

The respondent was employed by applicant in its legal and investigations department as an Investigation officer.

Appellant sought respondent's dismissal alleging that he had on various occasions facilitated the opening of various fraudulent accounts to the loss and prejudice of the appellant.

Before the appeals committee it was accepted by Mr.Lloyd representing appellant that the evidence against respondent was to a large extent circumstantial.

The appeals committee then made a finding of fact to that effect but the respondent now challenges that finding of fact.

It was further concede by the appellant's representative that the case was based on generalisations.

The appellant's case also hinged on the affidavit of two accomplice witnesses Mr. Dowa and Mr. Makanzanga. The two culprits implicated the respondent in their scheme to defraud the appellant. It is however common cause that two accomplices were men of questionable integrity. No reliance can be placed on their affidavits being men of dubious character they had every reason to misrepresent facts and colour the evidence

With reference to relevant labour legislation discuss how the Labour Court is likely to rule on this case.

[25 Marks]

Source: Labour court

Judgement No: LRT/H/305/2002

Case No: LRT/H/60/2000

QUESTION 4

Fungai Chirenje

Versus

National Railways of Zimbabwe (NRZ)

This is an application for an interim award. For the application to succeed it must be shown that the applicant has a strong unassailable case on appeal.

The respondent is a parastatal which sponsors a football club, Railstars. The respondent offered applicant a fixed term contract of employment. The contract was renewed on a number of occasions. The applicant unsuccessfully applied to be employed as a permanent employee. His application was unsuccessful.

Eventually his fixed contract of employment was not renewed. He approached the Labour officer, seeking to be made a permanent employee. He succeeded before the labour officer. The determination was however overturned by the senior labour officer. Applicant then appealed to the Labour court against the decision of the senior labour officer.

With reference to relevant labour legislation discuss how the Labour court is likely to rule on this matter. **[25 Marks]**

Source: Labour court

Judgement No: LRT/MT/2/2001

Case No: LRT/MT/47/98

QUESTION 5

Fansen Ngwenya

Versus

Gold Star Sugar

In this matter the parties appeared before Mrs Makamure and agreed to settle the matter in accordance with a written agreement that was dated 30 July 2001. This was signed by representatives of both parties and also by Mrs Makamure on 30 July 2001.

When the settlement cheque was later sent to the applicant, he attempted to refuse it and alleged that when the agreement was entered into, he was tired after having travelled from Bulawayo to

Harare and further that his representative had not had the necessary mandate to negotiate and accept the settlement.

The applicant is the one who picked a representative of his choice. He did not act under duress. He could have sought a postponement, if he was too tired to deal with the matter but did not, he chose to proceed with the matter and he did.

He had earlier sought a weeks' postponement to try and negotiate an out of court settlement and this had been granted. It was alleged on behalf of the respondent that at all material times the applicant was present.

The applicant accepted the money and used part of the money.

With reference to relevant labour legislation discuss how the labour court is going to rule on this matter. **[25 Marks]**

Source: Labour court
Judgement No: LRT/MT30/2002
Case No: LRT/MT/51/99

QUESTION 6

Fidelis Mucharuza

Versus

Fawcett Security Operations

Appellant Fidelis Mucharuza was employed by the respondent company as a security guard. He was found guilty of breaching paragraph 2 part v of the employment code of conduct in that he visited the premises of United Bottlers while off duty. United Bottlers was the respondent's client.

Appellant has submitted that the manager and the designated officer who found him at United Bottlers conducted the hearing. He submits that since they were the witnesses to the alleged offence, they ought to have recused themselves as they were interested persons.

Secondly, he argues that the provisions of paragraph 2 part v of the code of conduct are ultra vires the provisions of the constitution in so far as it seeks to curtail appellants' freedom of movement. He argued that he is a free citizen who has a right to move and associate as he wishes.

The employer and the negotiating committee stated that the right to freedom of movement is not absolute. It cannot entitle persons to move into private premises.

With reference to relevant labour legislation discuss how the Labour court is likely to rule on this matter. [25 Marks]

Source: Labour court
Judgement No: LRT/MD/18/2002
Case NO: LRT/MD/1997

QUESTION 7

Titus Jachatimbe

Versus

Holiday Inn

This is an application for condonation of late noting of an appeal.

The applicant was supposed to attend a hearing on 19 February 2002. He says that he had transport problems and therefore he failed to come to court. As Mr. Lloyd for the respondent correctly observed, it is not easy to determine whether or not the applicant had transport problems. However the applicant made his application for recession a day after the default judgment had been entered.

This shows that he is keen to prosecute the matter. Applicant reported the respondent to the Ministry of Public Service Labour and Social Welfare for being dismissed without ministerial approval.

It was stated before the Labour officer that the applicant was employed as a casual worker by the respondent. Since he was employed for five months, he became a permanent worker. Applicant wanted respondent to reinstate him.

Respondent's position was that the position in which appellant was employed was temporary and that there was no provision for it to become a permanent post.

The respondent concede the length of period applicant had worked as casual worker but insisted that the position could not be a permanent post.

The Labour officer then determined that the respondent should treat the applicant as having been permanently employed until the date of the hearing. The labour officer then ordered the respondent to pay applicant two months salary, one month's notice pay and cash in lieu of leave.

The respondent complied with this order. The applicant accepted payment in terms of that determination dated 25 August 1998.

The applicant was however aggrieved by this determination and on 15 September 1998, he referred the matter to a senior labour officer.

The applicant, among other things, queried the assertion by the respondent that the position he had occupied was not a permanent one when according to the applicant a permanent employee had since replaced him. The senior labour officer dismissed the case and applicant appealed to the Labour court.

With reference to relevant Labour legislation discuss how the Labour court is going to rule on this matter. **[25 Marks]**

Source: Labour Court
Judgment No: LRT/H/243/2002
Case No: LRT/h/77/1999

END OF EXAMINATION